

STATE OF FLORIDA
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES
725 SOUTH BRONOUGH STREET - JOHNS BUILDING
TALLAHASSEE, FLORIDA 32399-1007

FILED
DIVISION OF FLORIDA
LAND SALES, CONDOMINIUMS
AND MOBILE HOMES
DATE 7/5/91
DOCKET CLERK C. Lanna

In Re: Gulf & Bay Club Bayside
Condominium Association, Inc.

Docket No. DS90312

FINAL DECLARATORY STATEMENT

COMES NOW, the Director of the Division of Florida Land Sales, Condominiums and Mobile Homes and, pursuant to Section 718.501 and Section 120.565, Florida Statutes, issues this Declaratory Statement as follows.

FINDINGS OF FACT

1. On or about November 14, 1990, the Division received the Petition for Declaratory Statement filed by Gulf & Bay Club Bayside Condominium Association, Inc., the condominium association responsible for the operation of Gulf & Bay Club Bayside, a condominium located in Sarasota County, Florida.

2. The developer of the condominium is Siesta Bayside Associates, a Florida general partnership. The developer, pursuant to Section 718.116(8), Florida Statutes (1989), had offered a guarantee of common expenses from the inception of the condominium until turnover on March 22, 1990. During the guarantee period, insurance premiums for workers compensation and flood coverage, became due and payable. According to certain financial statements prepared by the association, this

insurance was prepaid and credited to the developer in the amount of fourteen thousand eight hundred sixty-eight dollars and seventeen cents (\$14,868.17). The insurance premiums were due and payable prior to turnover.

3. Petitioner requests whether pursuant to Sections 718.111(11), 718.115, 718.116(9) and 718.301, Florida Statutes, the developer is entitled to any credit for prepaid insurance when the premiums were due and payable in full during the period in which the developer guaranteed assessments.

4. The Division notified the developer of the pendency of this proceeding, and the developer has declined to intervene or otherwise participate in this proceeding.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over this matter pursuant to Section 718.501, Florida Statutes and Section 120.565, Florida Statutes.

2. According to Section 718.116(8)(a)2, Florida Statutes (1989), a developer may be excused from the payment of assessments which would otherwise be assessed against units owned by the developer during that period of time in which he has guaranteed to the other unit owners that assessments against their units will not increase over a stated dollar amount:

1...

2. A developer...may be excused from the payment of his share of the common expenses...during the period of time that he

has guaranteed each purchaser..., that the assessment for common expenses of a condominium imposed upon the unit owners would not increase over a stated dollar amount and has obligated himself to pay any amount of common expenses incurred during that period and not produced by the assessments at the guaranteed level receivable from other unit owners.

The rules of the Division address a guarantee of common expenses. Rule 7D-18.006, Florida Administrative Code, provides in part:

(8) The assessments receivable at the guaranteed level from unit owners other than the guarantor used in calculating any guarantor's obligation do not include other sources of income such as vending machine income and capital contributions. The guarantor shall fund the difference between assessments at the guaranteed level and the actual common expenses incurred during the guarantee period.

(9) If, at any time during the guarantee period, funds collected from assessments are not sufficient to provide payment, on a timely basis, of all common expenses, the guarantor shall fund deficits at the time such payment is due. Any reserves as set forth in the adopted budget shall be fully funded in the same manner as assessments are collected from unit owners, i.e., monthly, bimonthly or quarterly. In any event, no later than 30 days after the end of the guarantee period, the guarantor shall provide to the association an accounting and reconciliation of the difference between assessments received from the other unit owners at the guaranteed level and the common expenses incurred during the guarantee period and shall fund any outstanding deficits at that time.

3. Pursuant to Section 718.301, Florida Statutes, a developer is required to relinquish control of the condominium association pursuant to the schedule set forth therein. In

accordance with Section 718.301(4)(c), Florida Statutes, the developer is required to present to the association a reviewed set of financial documents. The rules of the Division address requirements to which the turnover review must adhere. Rule 7D-23.003, Florida Administrative Code, provides in part:

(5)(a) The review required by Section 718.301(4)(c), Florida Statutes, shall cover a period beginning with the date of incorporation of the association and ending with the date of the transfer of association control to unit owners other than the developer. The notes to the financial statements shall expressly contain the following statements, or substantially identical statements, and the following information:

- 1...
2. A determination of and statement of total cash payments made by the developer to the association;
- 3...
4. If the developer offered a guarantee pursuant to Section 718.116(8), Florida Statutes, the notes shall state that a developer guarantee existed and the period of time covered by the guarantee. Additionally, the notes shall state whether and in what amount the developer paid any amount of common expenses incurred during the period covered by the review and not produced by the assessments at the guaranteed level receivable from the other unit owners,....

(b) The term "financial statements" as set forth in Section 718.301(4)(c), Florida Statutes, is defined to include the following, to be presented on the full accrual basis unless otherwise indicated herein:

1. Accountant's or auditor's report;
2. Balance sheet;
3. Statement of revenue and expense;
4. Statement of changes and financial position, cash basis;

5. Statement of changes in owner's equity; and
6. Notes.

4. There are basically two separate accounting systems, and each finds application under different circumstances. According to Black's Law Dictionary 18 (5th ed., 1979) these methods are described as follows:

Accrual Method. A method of keeping accounts which shows expenses incurred and income earned for a given period, although such expenses and income may not have been actually paid or received. Right to receive and not the actual receipt determines inclusion of amount in gross income. When right to receive an amount becomes fixed, right accrues....Entries are made of credits and debits when liability arises, whether received or disbursed....[Citations omitted].

Cash Method. The practice of recording income and expense only when received or paid out; used in contradistinction to accrual method....

5. The question presented in this petition revolves around these two methods of accounting. If the cash method is used in calculating the developer's obligations under a guarantee, only income actually received and expenses actually paid would be depicted in the financial statements regardless of whether a bill was actually due to be paid during the guarantee period or whether the income was supposed to be received during that period of time. Under the accrual method of accounting, only those expenses actually incurred are recognized regardless of whether the expenses are actually paid; income earned is shown even if the income was not actually received during that period of time. A review of the

statute and rules demonstrates that the turnover review should be based on the accrual method.

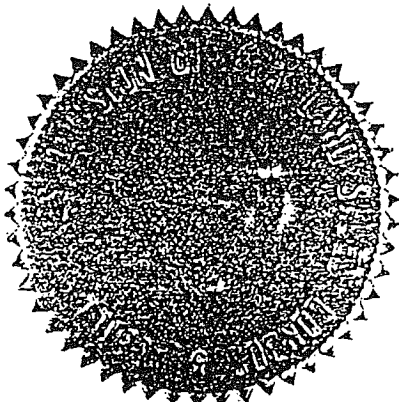
6. According to the facts of the petition, during the guarantee period, the developer pre-paid insurance when the premiums were due and payable in full, with the term of insurance encompassing both a portion of the guarantee period and the period subsequent to the expiration of the guarantee period. This payment was made on behalf of the association. Also according to the petition, the financial statements prepared for the association were prepared on the accrual basis, and the statements indicate that insurance was a prepaid item; the developer was credited the amount of Fourteen Thousand Eight Hundred Sixty-eight Dollars and Seventeen Cents (\$14,868.17) representing insurance coverage paid during the guarantee period with the coverage extending to the benefit of the association subsequent to the expiration of the guarantee period.


7. Under Section 718.116(8), Florida Statutes, the obligation of the developer during the guarantee period is to pay the difference between assessments receivable from the unit owners and those expenses incurred during the guarantee period. If the prepaid item is treated pursuant to the cash system of accounting, since the developer actually paid this expense on behalf of the association, it would be considered in its entirety an expense of the association with no credit forthcoming to the developer. In other words, the developer

would be responsible for the entire bill. If insurance was treated pursuant to the accrual basis of accounting, only that portion of the insurance expense actually incurred by the association during the guarantee period would be included as an association expense in the guarantee calculation, and the developer would be properly credited for that amount paid on behalf of the association but actually incurred for coverage subsequent to expiration of the guarantee period.

8. According to the statute and rules of the Division, the turnover review should utilize an accrual basis of accounting. Accordingly, the accountant properly treated insurance as a prepaid item and credited the developer for that amount of the insurance paid relating to coverage extending beyond and commencing after the expiration of the guarantee period. The developer is entitled to a credit in accordance with the formulation provided herein for prepaid insurance when the premiums were due and payable in full during the period, but the coverage of the insurance extended beyond the guarantee period.

DONE AND ORDERED this 5th day of July, 1991.




HENRY M. SOLARES, DIRECTOR
Division of Florida Land Sales,
Condominiums, and Mobile Homes
Department of Business Regulation
State of Florida

RIGHT TO APPEAL

THIS FINAL DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE CLERK FOR THE DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS DECLARATORY STATEMENT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Certified Mail to ROBERT L. MOORE, Esquire, 227 Nokomis Avenue, South, Venice, Florida, 34285, this 5th day of July, 1991.

Carolyn Cannon
CAROLYN CANNON, DOCKET CLERK

Copies furnished:

Karl M. Scheuerman
Sharon Malloy
Dean Woodson

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